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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Working paper on the promotion and protection of human rights by the exercise of democracy and the establishment of a democratic society, submitted by Mr. Osman El-Hajjé in accordance with Sub-Commission decision 1995/116

Introduction

1. By its decision 1995/116 of 24 August 1995, the Sub-Commission, having taken into consideration the oral statement on the subject made by Mr. Osman El-Hajjé, decided to request Mr. El-Hajjé to prepare a working paper on democracy and the establishment of a democratic society, to be submitted to it at its forty-eighth session. The present document is submitted pursuant to that mandate.

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A. Sources

2. Reference should be made to the numerous writings of jurists, political scientists and sociologists of the various geographical regions of the world, as well as to the following documents, proceedings, conferences and resolutions:

(a) United Nations:

(i) General Assembly:

Resolution 49/30 of 7 December 1994 and resolution 50/133 of 20 December 1995, both entitled "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies";

(ii) Commission on Human Rights:

Resolution 1995/60 of 7 March 1995;

Report of the Working Group on the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms (E/CN.4/1996/97);

(iii) Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993 (A/CONF.157/23);

(iv) Report of the Secretary-General of 7 August 1995 entitled "Support by the United Nations system of the efforts of Governments to promote and consolidate new or restored democracies" (A/50/332);

(b) Specific conferences:

(i) International Conference of Newly Restored Democracies, held at Manila from 3 to 6 June 1988, and its Declaration (A/43/538, annex);

(ii) Second International Conference of New or Restored Democracies, held at Managua from 4 to 6 July 1994, and its Declaration (A/49/713, annex);

(iii) Third International Conference of New or Restored Democracies, scheduled for 1997 at Bucharest.

B. Method of work

3. Since an outline of the study was provided at the previous session (E/CN.4/Sub.2/1995/49), the author hopes that this working paper can be

considered in plenary during the present session in order that a rapporteur can be appointed this year with a view to submitting a preliminary report at the forty-ninth session as the basis on which the Sub-Commission might take a final decision concerning the main lines of the study to be carried out.

4. It is important to emphasize first of all that in order to complete this task, and with a view to maintaining a human rights perspective and keeping the research at the right distance from political problems, the author would give priority to analysing the provisions of the international human rights instruments (Universal Declaration, covenants, conventions and other declarations).

5. In that connection, it would be appropriate to consider how the international instruments have addressed the question of democracy and the establishment of a democratic society and, consequently, the extent of the powers granted to man for the safeguarding, protection and development of his acknowledged rights.

6. It would also be appropriate to examine how those powers, if they exist, have been reflected in the legislation and incorporated into the public and private institutions of States, in order to identify any gaps and propose solutions.

7. It is perhaps worth recalling that a study on democracy and the establishment of a democratic society, especially within the framework of the Sub-Commission and of the Commission on Human Rights, will not be meaningful or useful, even in theoretical terms, unless it aims to define the citizen's place and role in maintaining and defending democracy because, in the final analysis, we are seeking to consolidate his acknowledged rights and if democratic society can provide us with the appropriate framework for attaining that objective, then we must define the contours of that society.

8. To that end, the study will consider the experiences of various countries of the five regional groups with a view to distinguishing the basic principles and points of reference which could lead to a consensus on the core characteristics of a democratic society. For the countries of the world have not all evolved at the same rhythm or with the same intensity, so that what is essential for one people may be important, but not vital, for another.

9. The study could be expanded to consider the practice of the international organizations and non-governmental organizations if the Sub-Commission so wishes. The experience of these institutions is very recent and might constitute an important area for thought and analysis.

10. By thinking in terms of concrete cases, we should be able to avoid the danger of conducting research on the basis of conceptual postulates that are not recognized by a large number of States and that would not permit us to reconstitute the reality of democracy as it is practised by different peoples.

11. This approach means focusing on the facts, which would certainly lead us to question and compare our observations in order to distinguish a number of generally accepted principles.

12. The method adopted involves taking into consideration the internal and international environment, and consequently the framework within which democracy is exercised. Therefore, the rapporteur will pay all due attention to the most significant historical, economic, cultural, social and legal factors capable of shaping or influencing the practice of democracy and the establishment of a democratic society.

C. Aim of the work

13. The increasing complexity of social phenomena, the diversified knowledge accumulated by mankind, the need for protection of both individuals and groups, the aspiration for distributive social justice and the constraints, sometimes very painful, of economic development mean that human beings want at any price to be masters of their destiny and to that end participate fully in affairs that concern them directly or indirectly by sharing with their fellow citizens, in equality and each according to his means, the burdens that result therefrom. Hence, it becomes a matter of urgency to concretize the unanimously recognized rule laying down the equality of human beings before the law and the rule of law which democratic society is considered to be the most able to realize.

14. Indeed, past and contemporary history offers many illustrations of the fact that while a State can be founded by one man or one family, in the broad sense, its continued existence necessitates the adhesion of the members of society, in their majority, to the options and rules established by the new State. Yet such adhesion can be assured only if the members enjoy equal rights before the law. Those rights must be determined and protected and

their violation made punishable by institutions which use procedures that are simple and easily understood by the average man and which furnish the safeguards of impartiality, competence and transparency that are realized in a democratic society.

15. Men aspire to enjoy the rights which are recognized as human rights in societies other than their own and which are naturally theirs as human beings capable of thought and expression. The facilities for members of the same society or of different human societies to acquire information, communicate and conceive common plans, and the removal of hindrances to the exchange of information between human beings are indispensable for the protection, consolidation and promotion of their rights. Indeed, the process of informing, inquiring about and knowing one another is essential to eliminating all kinds of discrimination and dogmas that do not contribute to the protection of human rights, since only a major reason, which must be determined and defined in advance, should permit any limitation of the enjoyment and exercise of those rights.

16. It is unacceptable that man, that extraordinary being who never ceases to push back the bounds of the possible and to postpone his fate as a mortal in the quest for eternity, should be deprived of his capacities to express himself freely, to translate his thoughts into living facts and to associate himself with his fellows to become stronger, resist the adversity that assails him and continue to work towards an objective that is imprinted in his chromosomes and genes and that can only be the common good of humanity, an endeavour that brings him closer to his Creator.

17. Thus, any discrimination between human beings which is based on colour, language, religion or race can only be rejected as contrary to the rule of equal rights. Likewise, it is inadmissible that some men should command others, without valid or acknowledged reason and without their prior consent, by means of coercion, force, with its multiple facets, or intrigues.

18. Yet while it is necessary for human beings in society to be divided into the rulers and the ruled for the good administration of their affairs, it is no less essential, for the observance of the rule of equality and also for the sake of efficiency, that rulers and holders of elective office should submit themselves at regular intervals to the test of electoral competition and to the judgement of the ruled in order to prevent the establishment of acquired

or permanent positions. The drawback is that this contest introduces a feeling of precariousness encouraging the incumbent, unconscious of the risk, to resort to dilatory or even immoral, and often illegal, means either to put off the election day or else to cancel the election completely. How can that to be remedied? Notwithstanding this drawback, the contest has advantages because it stimulates the candidate and incites him to apply greater effort and ingenuity knowing that, in the final analysis, he is working in the common interest. None the less, one of the great challenges is to persuade the men who are in the position of rulers to accept the verdict of the ballot-box without fear or misgivings and gracefully agree to become the ruled again. Another challenge is to persuade those who are ruled that the ballot-box is an effective tool for defending their rights, bringing their plans to completion, ridding themselves of rulers who are incompetent or unable to cope with difficult situations, and ultimately for becoming rulers themselves. Consequently, any use of violence needlessly complicates the rules of the game and could cause the elections to be delayed by giving alibis for anyone to deny the mutual recognition of rights. How can this mutual recognition be achieved? That is one of the objectives set for this work.

19. By increasing the opportunities offered to people in the labour market through the diversification of productive activities and the possibilities of material and spiritual enrichment, economic development reduces the tensions between social groups and promotes dialogue and consultation, and hence mutual respect. It increases the production of wealth and the reserves available for consumption and distribution both domestically and abroad. It employs people in research, production and marketing and can thus be seen as indispensable in compensating for the precariousness of elective office by offering people other interesting activities to engage in if they are not re-elected, thereby removing the dramatic and tragic aspect of an election defeat. In this sense, economic development seems to be an indispensable complement to the effective exercise of human rights and an objective to be attained for their full enjoyment. However, the question that may be asked is whether we must wait for such development or whether the precondition is to respect and safeguard human rights? In point of fact, this is a false dilemma because while economic development permits better exercise and total enjoyment of human rights, it cannot be used as an argument by the State to limit or violate

those rights. Nevertheless, it is undeniable that different countries do not all have the same level of economic development and consequently cannot offer the same guarantees of protection of those rights or provide their citizens with the same facilities for their exercise.

20. Since democracy and the establishment of a democratic society is the objective of the study, it should therefore determine the constituent elements and identify the obstacles to achieving that objective. In that connection, it might propose the establishment of a formal structure for the exchange of information among States in the field of democracy and for training to resolve and overcome the conflicts which arise in a democratic society, since dialogue may not produce solutions when the situation demands.

21. The study might serve as an expert appraisal, technical assistance and reference document for Governments, international organizations, non-governmental organizations and all persons working for the promotion of a democratic society. Thus, it would be appropriate to decide what initiative it should propose and how it should be carried out:

(a) Standard-setting initiatives, i.e. guidelines, a declaration or a resolution;

(b) The institution of a special procedure (working group or special rapporteur).

D. Content of the report

22. The report might focus on three main themes:

(i) What are the characteristic elements of a democratic society? In this regard, it would be useful to ask whether democracy can be uniform, whatever the socio-economic and cultural environment, or whether it is impossible for it to escape the internal and international contingencies that impose the colours and distinguishing marks of history upon it;

(ii) What are the obstacles and hindrances to the exercise of democracy? There are many possible kinds: legislative, administrative, sociological, economic, cultural, religious, historical and others brought about by the influence of the external situation;

(iii) The steps to be taken and the procedures to be applied to establish a democratic society. In this regard, the experiences undergone by various peoples will constitute points of preference to guide the

report. However, a number of preconditions should be respected. These include the setting up of institutions and the training of people to ensure the observance of the law.

1. The characteristics of a democratic society

23. Any democratic system comprises actors, standards of conduct and instruments to resolve the various kinds of disputes that are bound to arise between the actors and to interpret the rules. Lastly, what influence is exerted by the economic organization of a country?

(a) The actors

24. The actors in a democratic society include men and women, public and private institutions, and the media.

Men and women: what is their place and role, and under what conditions and procedures can their rights and freedoms be extended or limited, suspended or revoked?

The public institutions: these are the instruments by means of which the various powers express themselves, order and shape society as a whole. How are the institutions formed, run and dissolved? What are the basic institutions of a democratic society?

Parliament: who can become a member and how? Elections: what is their meaning and significance? Confidence and equality. The choice of parliamentarians: the need for a procedure based on competition; formal with two or more candidates; real or the expression of a conceptual pluralism; cooptation; nomination or designation by fiat.

The judicial branch: importance of independence, integrity and competence; safeguards.

The executive branch - product of the majority: dominant party or alliance of parties; what is the place and role of the minority? The political minority; the cultural, religious or linguistic minority.

The institution of the military: what is its place and role? Number of military personnel and mode of recruitment; the cost of its operation and maintenance.

Centralization and decentralization of the public institutions and protection of human rights.

The private institutions: a visible expression of free enterprise and freedom of action of men and women and a necessity of social life;

intermediaries between the public institutions and people, and tools for defending and protecting their rights and freedoms; they substitute for the public institutions, offsetting their deficiencies and shortcomings in satisfying human needs.

The media: as means of providing information, they must be clear, simple, exact, numerous and independent; as a tool for training and educating, they must help to smooth over the contradictions within society; the dangers of a monopoly of the media by the State, a political party or a social or occupational group.

(b) The standards

25. Democratic society lives by rules which it issues to ensure its development and continued existence. The actors therefore act according to its rules, which specify their rights and duties. The standards must be abstract and general, but also obligatory. How are these standards elaborated, applied and modified or abrogated? Can these standards come into conflict with international human rights standards? And how should any such disputes be resolved?

(c) Decision-making and dispute resolution

26. The elaboration, promulgation and application of standards give rise to polemics, confrontation and disputes, which may end in deadlock necessitating recourse to a neutral specialist body or to a judicial or political body. It is thus important to make sure that a decision is preceded by dialogue and consultation among the interested parties, which implies an obligation to inform as fully as possible. The decision will be taken by a majority or even by consensus. The law will determine the various kinds of decisions and how they should be adopted. In the event of deadlock before a decision is taken: recourse to specialist bodies, whose role is limited to removing difficulties and proposing solutions; after a decision is taken: judicial remedy or political remedy to settle a dispute brought about by the decision.

(d) Relationship between the organization of the economy and democracy

27. The organization of a country's economy determines the behaviour of human beings and institutions. The question is how far it influences the exercise of democracy. In this regard, the study will examine:

The impact of the right to private ownership of the means of production;

The consequences of State intervention to correct social inequality and restore equal opportunities for men and women;

Compatibility of the centralization of a country's wealth in the hands of a minority or of the State;

Social exclusion and the practice of democracy.

28. A country's economic underdevelopment and the desire to overcome it and make up lost time, provide the opportunity for the political authorities to solicit greater effort and sacrifice. It is therefore tempting to confound underdevelopment with a situation of emergency, threat, unrest or war to limit or even revoke rights and freedoms, on the pretext of accelerating or enhancing the development process. Is such an attitude consistent with a democratic society? Citizens must retain the freedom and rights necessary to scrutinize Government plans, make comments, ask questions and propose changes and amendments or even reject the plans completely. Arguments based on ignorance or incompetence are aimed fundamentally at masking authoritarianism and disregard of citizens by averting dialogue, discussion and consultation.

2. Obstacles and hindrances to the exercise of democracy

29. There are many such obstacles and it is easier to class them by the nature of the subject:

Obstacles which derive from a country's history: history creates habits and bonds of solidarity which may engender practices and behaviour that substitute the concepts of clans and tribes or others for the concept of citizens and rights and duties;

Legislative obstacles: a country's legislation may be frankly inegalitarian under various pretexts, especially religious, ethnic or linguistic;

Administrative obstacles: these are typified by the concentration of power in a country's capital or in one region, removing other citizens from the centre of decision-making;

Psychological obstacles: democracy is the sign of movement and change, which bring fear of the future and induce people to cling to what are considered to be well-established positions; this is the result of a lag in cultural level within a country's population;

A dominant position of the army or other components of society in making and implementing decisions.

3. Steps to be taken to establish a democratic society

30. All steps and initiatives must, as far as possible, come at the same time:

Recognition of citizens' rights and fundamental freedoms;

Creation of a variety of institutions enabling people to become familiar with the exercise of rights and freedoms;

Sensitization of the public from school onwards to the ideas of tolerance and to solving disputes through dialogue and consultation;

Creation of institutions of solidarity to bring a country's inhabitants closer together and to eliminate social exclusion;

Bring social groups closer together by reassuring the minorities and encouraging the culture of human rights;

Elimination from the legislation of any privilege or rule that discriminates on grounds other than merit or performance;

Encouragement of public festivities, celebrations and rejoicing which unite the largest possible number of members of the population;

Establishment of institutions to which a country's inhabitants can have recourse in cases of violation of their rights or deadlock in efforts to find a solution to a dispute;

Ensure the independence of the legislative, executive and judicial branches by delimiting their powers and setting up monitoring institutions throughout the country.

31. To conclude, the study might consider and explore, at the philosophical and ethical level, the question of democratic society as a peaceful means of resolving disputes and enabling human society to develop with all due respect for human rights as they are set forth in the Universal Declaration of Human Rights and the other covenants and conventions.